

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

ANTONIAK CONSULTING & TRAINING V. TURNKEY SOLUTIONS

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ANTONIAK CONSULTING AND TRAINING, INC., APPELLANT,
V.
TURNKEY SOLUTIONS CORPORATION, APPELLEE.

Filed March 20, 2012. No. A-11-599.

Appeal from the District Court for Douglas County: LEIGH ANN RETELSDORF, Judge.
Affirmed.

D.C. Bradford and Justin D. Eichmann, of Bradford & Coenen, L.L.C., for appellant.

Brett Ryan, of Willson & Pechacek, P.C., for appellee.

IRWIN, SIEVERS, and CASSEL, Judges.

IRWIN, Judge.

I. INTRODUCTION

Pursuant to this court's authority under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument. Antoniak Consulting and Training, Inc. (ACT), filed an action in district court against Turnkey Solutions Corporation (Turnkey) claiming that Turnkey owed it payment for services rendered. After a bench trial, the district court found in favor of Turnkey and determined that ACT was not owed any additional payment for the services it had provided to Turnkey. ACT appeals the district court's judgment. For the reasons stated below, we affirm the judgment of the district court in its entirety.

II. BACKGROUND

ACT is owned and operated by Ray Antoniak (Ray). As a consulting firm, ACT is hired by companies that are going through bankruptcy proceedings or are experiencing other difficulties. ACT works with those companies to determine the source of the problems and to implement possible solutions.

Turnkey is owned and operated by Jim and Amy Sedlak. Ray is Amy's father. Turnkey is in the business of media duplication.

In 2004, Turnkey hired ACT to evaluate another company, Micro Bytes, Inc. Turnkey was considering a merger with Micro Bytes in order to expand its manufacturing capabilities. ACT was paid \$125 per hour for its consulting work. Ultimately, ACT determined that Micro Bytes was not a viable company and the merger did not occur. However, Turnkey was still interested in expanding its manufacturing capabilities.

As a part of Turnkey's expansion plans, it sought to hire an operations manager to oversee the departments involved in the manufacturing process, including production, assembly, duplication, shipping, and receiving. Ray expressed an interest in the operations manager position, and Turnkey hired him to perform in that role. Ray believed that despite assuming the role of operations manager, he was never an employee of Turnkey, but instead remained in the capacity of a consultant. Ray was not on Turnkey's payroll and did not receive any benefits afforded to a regular employee. In fact, his paychecks were made out to ACT and not to Ray.

When Ray assumed the role of operations manager, Turnkey Solutions agreed to pay him \$6,000 a month, or \$72,000 per year. In addition, Turnkey and Ray discussed the possibility of Ray's receiving additional compensation, or bonuses, based on his performance and the growth of the company. They did not agree to a specific dollar amount for any additional compensation.

The record does not indicate exactly how long Ray worked at Turnkey; however, there is some suggestion that Ray's professional relationship with Turnkey ended during the summer of 2008. The parties do not dispute that during Ray's time with Turnkey, he was paid \$6,000 per month but was not paid any additional compensation or awarded any bonuses.

Approximately 1 year after the relationship between ACT and Turnkey ended, on August 4, 2009, ACT filed its first amended complaint, the operative pleading in this case. In the complaint, ACT alleged that pursuant to the quasi-contractual theories of quantum meruit and unjust enrichment, it was owed additional compensation for the services provided to Turnkey during Ray's tenure. Specifically, ACT asserted that Ray's efforts at Turnkey increased the sales, profits, and value of Turnkey and that Turnkey had made an oral promise to provide additional compensation beyond Ray's \$6,000 per month salary based on his performance and the success realized by Turnkey.

In March 2011, a bench trial was held on the allegations in ACT's complaint. At trial, Ray testified concerning how his efforts as operations manager at Turnkey were instrumental in the growth of Turnkey's sales and profits. He described how he assembled a team to implement the manufacturing operation, determined which manufacturing process to implement, configured a unique production floor, implemented a means to process film on site, designed accounting software, and produced a detailed procedural manual. Ray indicated that he was under the impression that he would be paid 10 percent of the increase in Turnkey's profits while he worked there.

In their testimony, Jim and Amy acknowledged that Ray was involved in the implementation of the manufacturing processes at Turnkey and that he satisfactorily fulfilled his duties. However, they disputed the magnitude of the significance of Ray's contribution to the increase in the company's profits. Jim and Amy testified that the implementation of the manufacturing process was a team effort by a number of different employees. In addition, Amy

specifically testified that many of the processes and policies initiated by Ray have since been upgraded and improved.

Jim and Amy provided testimony which indicated their belief that Ray was actually overcompensated for his work at Turnkey when he was paid \$72,000 per year. Initially, the company wanted to pay \$50,000 per year for an operations manager. Turnkey agreed to pay a higher salary to Ray because he was Amy's father and because Jim and Amy believed he was going through financial problems. Finally, there was evidence that Turnkey never agreed to pay Ray or ACT 10 percent of the increase in Turnkey's profits or any specific amount of additional compensation. Instead, Turnkey agreed that such additional compensation may be awarded to Ray depending on a variety of circumstances.

In addition to the parties' testimony, both ACT and Turnkey offered the testimony of an expert witness. Each expert provided evidence concerning their opinion of the value of Ray's work for Turnkey.

After trial, the district court entered a detailed order finding that ACT had failed to demonstrate that it was entitled to additional compensation for Ray's work for Turnkey beyond his annual salary. The court found, "[ACT] has not shown that [Turnkey] was unjustly enriched by those services [provided by Ray to Turnkey] or that the amount [Ray] has already received should be supplemented in order to ensure that [Ray and ACT] received the reasonable value of his services."

ACT appeals from the district court's order here.

III. ASSIGNMENTS OF ERROR

On appeal, ACT alleges, consolidated and restated, that the district court erred in concluding that it was not entitled to recover additional compensation from Turnkey Solutions based on the principles of quantum meruit and unjust enrichment.

IV. STANDARD OF REVIEW

The theory of quantum meruit is premised on the existence of a contract implied by law. *Tracy v. Tracy*, 7 Neb. App. 143, 581 N.W.2d 96 (1998). See, also, *Tobin v. Flynn & Larsen Implement Co.*, 220 Neb. 259, 369 N.W.2d 96 (1985). An action sounding in contract is an action at law. *Id.* In a bench trial of a law action, the trial court's factual findings have the effect of a jury verdict and will not be disturbed on appeal unless clearly wrong. *Id.* The trial court, as the trier of fact, is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *Id.*

V. ANALYSIS

On appeal, ACT alleges that the district court erred in concluding that it was not entitled to recover additional compensation from Turnkey Solutions based on the principles of quantum meruit and unjust enrichment. Based on our review, we affirm the judgment of the district court.

We initially note that the evidence presented in this case supports the district court's finding that the parties did not have an express contract which would preclude recovery based on a quantum meruit or unjust enrichment theory of recovery. In order for an express contract to result, there must be, among other things, a meeting of the minds at every point with nothing left

open for future arrangement. *Professional Recruiters v. Oliver*, 235 Neb. 508, 456 N.W.2d 103 (1990). According to the evidence, there was not a meeting of the minds between the parties regarding whether or how much Turnkey would provide to Ray and ACT for additional compensation for Ray's work as operations manager.

Nebraska law treats quantum meruit and unjust enrichment as essentially the same under the doctrine of quasi-contracts, and the terms are often used interchangeably. See *Professional Recruiters v. Oliver*, *supra*. Generally, the principle of quantum meruit is a contract implied in law theory of recovery based on the equitable doctrine that one will not be allowed to profit or enrich oneself unjustly at the expense of another. *Tracy v. Tracy*, *supra*. The issue of unjust enrichment is a question of fact. *Id.*

Where benefits have been received and retained under circumstances that it would be inequitable and unconscionable to permit the party receiving them to avoid payment therefor, the law requires the recipient to pay the reasonable value of the services. *Id.* To give rise to an implied contract to pay, the services must have been rendered in expectation that the other party would pay. In turn, the other party must have accepted the services with knowledge of that expectation. *Id.*

The evidence is conflicting regarding whether ACT could reasonably expect additional payment, beyond Ray's \$72,000 per year salary, for Ray's work at Turnkey. According to Ray, his \$72,000 annual salary was merely a starting point for his total compensation from Turnkey. He believed that Turnkey intended to pay him additional compensation, in the form of bonuses, which would total approximately 10 percent of the company's increase in profits. Ray testified that the increase in profits realized by Turnkey during his tenure was due almost solely to his efforts and skills. During his testimony, he explained in detail the processes he implemented and the structure he provided to Turnkey. Taken as a whole, Ray's testimony indicates his belief that Turnkey would be unjustly enriched if it were permitted to retain all of the benefits Ray provided to the company at a salary of only \$72,000 per year.

According to Jim and Amy, the \$72,000 annual salary Turnkey paid to Ray was more than sufficient to compensate him for his work as operations manager. In fact, initially, Turnkey wanted to pay only \$50,000 per year to obtain a qualified and satisfactory operations manager, but the company agreed to pay a higher rate to Ray because he was Amy's father and was experiencing some financial difficulties. Although Turnkey did indicate to Ray that additional compensation was possible based on a variety of factors, including Ray's performance and the company's profits, it did not explicitly promise to pay Ray 10 percent of the increase in profits or any other specific amount.

During their testimony, Jim and Amy indicated that even though Ray was a good operations manager, he was not solely responsible for the company's increase in profits. Rather, the implementation of the manufacturing process was a team effort that was directed and driven more by Jim and Amy than by Ray. There was also testimony that many of the procedures and processes implemented by Ray during his time at Turnkey were actually inefficient and had been updated and improved since he left the company. Taken as a whole, Jim's and Amy's testimony indicate their belief that Ray was fully compensated for his work and efforts at Turnkey and that Ray is not owed any additional compensation.

Based on the evidence presented at trial, we cannot say that the district court was clearly wrong in finding that Turnkey did not owe ACT any additional compensation for Ray's work as operations manager beyond his \$72,000 annual salary. There was conflicting evidence presented on this issue by the parties, but as we discussed above, in a bench trial, the trial judge is the sole judge of the credibility of the witnesses. The district court clearly found Jim's and Amy's testimony to be more credible than Ray's testimony. And, based upon our review, we find that Jim's and Amy's testimony was sufficient to support the district court's ultimate conclusion that Turnkey did not owe ACT any additional compensation pursuant to the theories of quantum meruit or unjust enrichment. We affirm the decision of the district court in its entirety.

VI. CONCLUSION

For the reasons stated above, we affirm the decision of the district court that ACT failed to demonstrate that it was entitled to additional compensation for the work Ray did as Turnkey's operations manager.

AFFIRMED.